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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/541,390	03/31/2000	Lynice S. Spangler	10559/153001/P7987	3458

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EXAMINER
WANG, LIANG CHE A

ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/541,390	Applicant(s) SPANGLER ET AL.
	Examiner Liang-che Alex Wang	Art Unit 2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3/3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 March 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *03/03/2003* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1-24 remain for examination.
2. The text of those sections of Title 35, US Code not included in this section can be found in a prior Office Action.
3. Claims 1, 3, 6-8, 10, 13-15, 17, 20, 21, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Aras et al., US Patent Number 5,884,037, hereinafter Aras.
4. Claims 2, 4, 5, rejected under 35 U.S.C. 103(a) as being unpatentable over Aras in views of Hall et al., US Patent Number 5,502,370, hereinafter Hall.
5. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, paper number 6, mailed 12/11/2002.
6. Each of amended independent claims 1, 8, 15 added a limitation "actually", which contains the same scope as the previous claims 1, 8, 15, therefore is rejected for the same reason. (Col 2 lines 20-64, the system determined the bandwidth is not fully utilizing (only used 5Mp/s out of total 10Mp/s bandwidth,) so the system is able to allocate the additional bandwidth (2Mp/s) using the unused portion of the previously allocated bandwidth.)

Response to Arguments

7. Applicant's arguments filed 03/03/2003, paper number 7, have been fully considered but they are not persuasive.
8. In that remarks, applicant's argues in substance:

a. That: "Aras teaches nothing about the actual, that is Aras does not teach determining whether the information that is scheduled to be broadcast is actually using the amount of the bandwidth that was allocated,"

This is not found persuasive because the amended claim recites the limitation of "determining whether information scheduled to be broadcast digitally is *actually* utilizing all bandwidth previously allocated to broadcasting the information." Aras is determining the usage of the predicted bandwidth, and utilizing the unused portion of the predicted available bandwidth, (see Figure 14, step 1403 determines the availability of bandwidth, and steps 1405-1407 is utilizing the bandwidth. Although Aras might be using a reservation system or using a predicted method, however, Aras is *actually* utilizing all bandwidth previously predicted, allocated to broadcasting the information. Although applicant's invention might be different from Aras's, however, the claimed limitations have not yet made enough distinction.

b. That: Hall's disclosure has nothing to do with allocating unused bandwidth in a network system.

This is not found persuasive because the test of obvious is:

"whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention," *In re Gorman*, 933 F.2d at 986, 18 USPQ2d at 1888.

Subject Matter is unpatentable under section 103 if it "'would have been obvious..... to a person having ordinary skill in the art.' While

there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or prior art specially suggest making the combination." *In re Nilssen*, 851 F.2d 1401, 1403 , 7 USPQ2d 1500, 1502 (Fed. Cir. 1988.)

"Such suggestion or motivation to combine prior art teachings can derive solely from the existence of a teaching, which one of ordinary skill in the art would be presumed to know, and the use of that teaching to solve the same [or] similar problem which it addresses." *In re wood*, 599 F.2d 1032, 1037, 202 USPQ 171, 174 (CCPA 1979.)

"In sum, it is off the mark for litigants to argue, as may do, that an invention cannot be held to have been obvious unless a suggestion to combine prior art teachings is found in a specific reference."

Entire quote from In re Oetiker, 24 USPQ2d 1443 (CAFC 1992.)

Accordingly, Aras has already taught limiting the amount of additional information to a preset limit (Col 9 lines 53-61). There are several ways to implement the preset limit. Hall is just a supporting reference to show that a preset limit indicator could be a preset percentage indicator, because percentage indicator is easy for user to read and understand.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liang-che Alex Wang whose telephone number is (703) 305-8159. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R Sheikh can be reached on (703) 305-9648. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9000.

Liang-che Wang
March 11, 2003

AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100